

BIRMINGHAM AREA CABLE BOARD

March 2, 2009

P.O. Box 165
Birmingham, MI 48012
248.336.9445

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

RE: COMMENTS OF THE BIRMINGHAM AREA CABLE BOARD TO THE FEDERAL COMMUNICATIONS COMMISSION

**CSR-8126, CSR-8127, CSR-8128
MB Docket No. 09-13**

Dear Secretary Dortch:

These Comments are filed by the Birmingham Area Cable Board, (BACB) in response to the Media Bureau's Request for Public Comment, pursuant to the Bureau's February 6, 2009 Notice. The BACB supports and strongly urges the Commission to grant all three of the above-captioned petitions concerning public, educational and governmental ("PEG") access channels.

I. Community Information

The Birmingham Area Cable Authority (the BACB) is a consortium of four (4) municipalities, consisting of the City of Birmingham, Village of Bingham Farms, Village of Beverly Hills and the Village of Franklin, Michigan. The BACB is a creation of the Cable Act found at 47 USC §521 et seq. and is authorized by Article VII, Section 28 of the Michigan Constitution of 1963 and the Urban Cooperation Act of 1967, M.C.L.A. §124.501 et seq.; MSA §5.4088. Our franchised cable provider is Comcast Cablevision of the South, Inc. Beginning in 2007, AT&T (Michigan Bell Telephone Company d/b/a AT&T Michigan) was granted franchise agreements from the various consortium communities pursuant to M.C.L.A. §484.3301 et seq., the Uniform Video Services Local Franchise Act. Our community has negotiated cable franchises since March 8, 1982.

Pursuant to Federal and state law, the franchise agreements require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system:

- We currently have 1 channel (or capacity) devoted to government access;
- 1 channel (or capacity) devoted to public access; and,
- 1 channel (or capacity) devoted to educational access.

Municipal Channel 15:



www.birminghamareacableboard.org



Municipal Channel 15 carries a variety of programming in the BACB viewing area. All public meetings allow for transparency and encourage participation in the governmental process. Meetings include:

- The Birmingham City Commission meeting,
- The Birmingham Planning Commission meeting,
- The Village of Franklin meeting, and
- The Village of Beverly Hills Council meeting.

The BACB also televises its Board meetings on Channel 15. These meetings are televised live and also rebroadcast.

We also produced and aired the BYA Youth Dog Show and a documentary program on the Kreger Farmhouse for its relocation and preservation. Each of these programs is unique and provides vital communication with the local community (aired on both channel 18 and 15).

Public Access Channel 18:

The BACB has its Public Access channel located at channel 18. Public access encompasses the following programming that are locally produced and/or broadcast:

- **Active Living** -- Highlights the varied activities available to seniors at the Bloomfield Township Senior Center. **This Week's Show - Volunteerism** with Christine Tvaroha.
- **Agebusters** -- *Cardio & Strength Intervals*. Provides a multi-level workout combining cardio-endurance training, muscle strengthening, balance coordination and light stretching.
- **Bewick & Mack** --
- **Birmingham Bloomfield Chamber of Commerce** -- *Economic Forecast 2009* with Sam Kahan.
- **Birmingham Historical Society** -- *Birmingham: A Year in Photographs* with Ron Arroyo.
- **Birmingham Musicales** -- *Love is in the Air*.
- **Birmingham Republican Women's Club** -- Ron Weiser.
- **Birmingham Youth Assistance** -- *28th Annual Kids' Dog Show* featuring Boo, winner of Best in Show, with owner Annie Goodman.
- **Bloomfield Republican Women's Club** -- *John McCulloch*.
- **Bloomfield Township Coyote Talk** -- *Coyote Talk* with Dan Badgley. An informative look at the behavior of the coyote in a suburban habitat.
- **Bloomfield Township Today** -- *Handicap Parking Accessibility; Bloomfield Township Tree Ordinance* with Erica Nader, Patti McCullough and Meghan Bonfiglio.
- **Bottom Line** -- Series addressing matters that affect the quality of life of persons within our community. **This Week's Show** -- *What Does Oakland Family Services Offer?*
- **Calvary Chapel, Ft. Lauderdale** -- *The Active Word*

- **Christ Church Cranbrook** -- *10th Annual World Sabbath of Religious Reconciliation.*
- **Community Bulletin Board** -- The Community Bulletin Board runs various times throughout the day and over the weekend. *Check out what is going on in the community.*
- **Conservative Conscience** -- *Jay Fedewa.*
- **Consumer's Corner** -- *Office of Community and Faith-Based Initiatives.*
- **County Corner** -- A look at Oakland County issues. **This Week's Show** - *Habitat for Humanity of Oakland County.*
- **Daughters of the American Revolution** -- *2009 Good Citizen Awards Ceremony.*
- **Dining Out** -- Series gives the community a behind-the-scenes look at local restaurants. Meet the owners, chefs & staff & see the exquisite dishes of each restaurant. **This Week's Show** - *Phoenicia* with Sameer Eid. **Host** – Jonathan Swift.
- **Eye on Oakland** -- Provides interesting, relevant & timely information about Oakland County's government & politics that will inform, educate & enlighten. **This Week's Show** - *TBA.* **Host** - Chuck Moss.
- **Global Connections** -- Series highlighting the impact that people from our community have on the international scene in music, politics, cultural affairs, etc. **This Week's Show** – *Sign Language Studies* with Dan McDougall. **Host** – Jonathan Swift.
- **Health Talk** -- Series focusing on timely health & wellness issues. **This Week's Show** – *Opiate Addiction* with Dr. Hakeem Lumumba. **Host** – Dr. Niru Prasad
- **House Michigan!** -- *Michigan State Housing Development Authority Partnerships.*
- **In the Fight** -- Showcases the latest action from the field, including soldiers talking about what is happening on the front lines.
- **Insurance 101** -- *Michigan's No Fault Insurance* with Butch Hollowell.
- **Interfaith Odyssey** -- Celebrates our diversity & promotes understanding between people of different faiths, including their perspectives on current events. **This Week's Show** – *Does Your Religion Give Credence to the Old Testament of the Bible?* **Host** – Azar Alizadeh.
- **Kensington Community Church Service** -- To turn people who think God is irrelevant into fully devoted, equipped, and mobilized followers of Christ through the ministry of local churches.
- **Michigan Entrepreneur** -- Series highlighting successful entrepreneurs in our community. **This Week's Show** - *Project Innovations* with Charles Fleetham. **Host** - Tara Kachaturoff.
- **New Beginnings** -- Teaches the word of God. **This Week's Show** - *Roles, Responsibilities and Decision Making, Part 2* with Pastor Desi Turner and Mary Turner.
- **Plane Ideas** -- Explores art, music, food, politics and more - from a multicultural viewpoint. **This Week's Show** - *Healthy Skin* with Dr. David V. Spurlin. **Host** - Greg Thrasher.

- **Practical Law** -- Series with leading members of the legal community discussing matters of family law, the court system, divorce, criminal defense & etc. **This Week's Show** – *Attorney Grievance Defense* with Kenneth M. Mogill. **Host** – Henry Gornbein.
- **Revolution Against Evolution** -- *Tornado in a Junkyard*.
- **SciEngiMathePloration** -- *Cars - Past, Present & Future*.
- **Sebastian Lucido Ministries** -- *The Burden for Healing is on You*.
- **Senior Matters** -- Addresses current issues of importance to senior citizens and baby boomers coming of age. **This Week's Show** - *Sleep Apnea* with Lori Kieleszewski. **Host** - Gregory Jamian
- **Senior Women's Club** -- *Performing Arts* with Vincent Paul.
- **Special Bloomfield Township Today** -- *Understanding Your Assessment* with Bill Griffin and Dan Devine. A look at how property taxes and assessments are determined.
- **Spectacles - A New Focus** -- *Bodypure* with Tina Boos. **Hosts** - Betsy Laboe and Ellen Rogers.
- **Talk of the Town** -- *Major Changes for Newspapers; Lots in Lansing; Bloomfield Talks Schools Again* with David Buckley, Chuck Moss, Clinton Baller and Shelli Weisberg.
- **Technology and You** -- Discussion of the uses of technology in daily life. **This Week's Show** - *Technology and Retailing* with Stephen Czapiewski. **Host** - Robert Kachadourian.
- **The Job Show** -- *Investing in Workplace Safety*.
- **Time Out for Opera** -- Series highlights the many facets of opera art, production & history. **This Week's Show** – *Lettie Beckon Alston*. **Hosts** – Karen DiChiera & Jonathan Swift.
- **United Homeowners Association** -- *Meeting of February 19, 2009* with Gary Peters, Ed Sosnick, Dave Payne and Bill Griffin.
- **Way, The Truth and The Life, The** -- *Produced by Ken Wade & the Christian Bible Students*. Program that focuses on the Bible & the study of its teachings.
- **Weekly Bible Lesson** -- *Produced by Christian Science Quarterly "Practical Inspiring Truths from the Bible."*
- **Woodside Bible Church** -- Weekly service series.

Birmingham Public School Channel 17:

The Birmingham Public School District produces and broadcasts on channel 17. The mission of the educational access channel is three-fold:

- To inform our constituents of what is going on in the Birmingham Public Schools.
- As an extension of the Birmingham Public Schools into the home market.
- To provide a forum for our students' work.

The District Board of Education meetings are aired live and rebroadcast on channel 17, giving parents vital information and updates on the activities of the school district. High school parents, students and teachers have the opportunity to view school sponsored

band, orchestra and choir concerts. Elementary and middle school parents and children have the opportunity to watch their children in various concerts and talent events.

Students are able to produce and cablecast their own original productions. In addition students watch themselves participate in sporting events such as football, basketball and baseball, as these games are taped and rebroadcast over the system. Parents have the opportunity to view original local programming related to the parenting challenges such as "Pressures Daughters Face Today", "Child's Learning Disability", and "Raising Kids in a Digital World". Every elementary school in the district has a program devoted to their educational guidance on this channel.

These PEG channels are located on the basic tier of the cable system. These channels have been located in their respective channel positions for decades. For the viewers of PEG channels, they know that these channels are located on the basic tier. For years, they have known that if they want to watch their child's school play or football game, or whether they want to watch their local government in action, they know where to find it.

For the subscribers who do not regularly tune-in to the PEG channels, they have a greater likelihood of finding an interesting topic on PEG as they scroll through the channels on their TV with the PEG channels in their traditional location on the basic tier. No one ever scrolls through channel 99 or channel 900 and above (where AT&T and Comcast want to transplant PEG).

The basic tier for PEG is what the framers of the Act envisioned, so that PEG channels are located near the network channels where subscribers navigate most frequently.

Thus, PEG programming in the BACB communities provides local residents with informational, public safety, educational, cultural and local opinion programming of uniquely local interest that they cannot obtain elsewhere.

We rely upon our PEG channels to convey important public information throughout our community. People in our community rely on the channels to receive information. If the channels are less accessible for technical reasons, or because one must effectively pay extra to receive the channels, the PEG channels would become much a less accessible effective avenue for community communications, and some subscribers we now reach would not receive the information at all. We have little doubt that the problems caused by PEG digitization by Comcast and/or by the Channel 99 platform developed by AT&T, will marginalize and effectively eliminate PEG access.

II. AT&T Experience

It is the goal of the BACB to provide public and municipal access to all of our residents. We are currently providing this access through Comcast and currently in active discussions with AT&T regarding delivery of PEG programming.

The challenge presented by AT&T's U-Verse platform is that it forces PEG outside of the basic tier, increases ongoing costs substantially and adds to the general confusion and inconvenience to the viewers. As a result of this confusion and inconvenience, PEG viewers will not be able to find their local access channels and just tune out. This is not what Congress intended when they adopted the Cable Act into law.

III. Federal Cable Act

The Cable Communications Policy Act of 1984 (the "Federal Cable Act"), clearly indicates that the basic tier is where the statutorily required PEG channels are to be located. While many have cited it, it bears repeating that the Federal Cable Act states, in pertinent part, as follows:

(7) Components of basic tier subject to rate regulation.

(A) Minimum contents. Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of sections 614 and 615 [47 USCS §§ 534 and 535].

(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

47 USC 543(b)(7)

Relying upon the Federal Act, the BACB placed its PEG channels on the basic tier. The Act required these channel placements, and the Franchise agreement requires this placement. After over 2 decades of such reliance, to the detriment of the franchising authority, relocation of these channels should be effectively estopped. The public has come to rely upon these channels being where they have been for a quarter century. It is not the public that is seeking these channels to relocate, it is the cable providers. The reason for the cable providers request is so that they can open the bandwidth that PEG currently occupies, and resell that channel capacity at a greater profit.

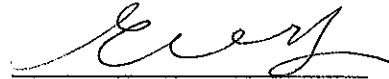
Balancing profit above informational, public safety, educational, cultural and local opinion programming is not what Congress had in mind when the Federal Act was enacted.

IV. Conclusion

Our PEG channels are a critical and irreplaceable resource for our community. They are the key medium of communication for our local government to connect with residents, for local educational institutions to communicate with our residents, and for residents to communicate among themselves and to watch and participate in a dialogue

about our community. In light of the decreasing amount of truly local and independent programming available on broadcast and other commercial channels, PEG is the only full-time, genuinely local source of television programming available to our residents. We therefore strongly urge the Commission to grant all three petitions.

Respectfully submitted,



Elaine McLain
Chairman, Birmingham Area
Cable Board

cc: James N. Horwood
Spiegel & McDiarmid LLP
1333 New Hampshire Avenue, N.W.
Suite 200
Washington, D.C. 20036

Teresa S. Decker
Varnum
P.O. Box 352
Grand Rapids, MI 49501-0352

Joseph Van Eaton
Miller & Van Eaton P.L.L.C.
1155 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Michael J. Watza
Kitch Drutchas Wagner Valitutti & Sherbrook
1 Woodward 24th Fl
Detroit, MI 48226

Timothy J. Currier
Beier Howlett, P.C.
200 East Long Lake Road, Ste 110
Bloomfield Hills, MI 48304